

# APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

## SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

### PERSONAL INFORMATION

1. Full Name: Gregory John Gnepper
2. Have you ever used or been known by any other name? No  
If so, state name:
3. Office Address: Maricopa County Superior Court  
South Court Tower – Courtroom 2A  
175 West Madison Street  
Phoenix, AZ 85003
4. How long have you lived in Arizona? 18 years  
What is your home zip code? 85018
5. Identify the county you reside in and the years of your residency.  
Maricopa County, 18 years
6. If nominated, will you be 30 years old before taking office? Yes  
If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? Yes
7. List your present and any former political party registrations and approximate dates of each: Independent (all times)

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Male**

Race/Ethnicity: **Caucasian**

<b>EDUCATIONAL BACKGROUND</b>
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9. List names and locations of all post-secondary schools attended and any degrees received.

**Adrian College** (Adrian, MI) – Bachelor of Arts, 2002

**University of Michigan Law School** (Ann Arbor, MI) – Juris Doctor, 2005

10. List major and minor fields of study and extracurricular activities.

**Majors:** Mathematics and Political Science

**Minor:** Business Administration

**Extracurricular:** Varsity Cross Country  
Varsity Track & Field  
Pre-Law Program  
Professor's Research Assistant  
Math Tutor

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

**Undergraduate:** Summa Cum Laude (3.98 GPA)  
Cross Country Team MVP  
Partial Academic Scholarship

**Law School:** Cum Laude (3.598 GPA)  
Jurisdiction/Choice of Law Award (top score in class)  
Moot Court  
Intramural Sports  
Partial Academic Scholarship

<b>PROFESSIONAL BACKGROUND AND EXPERIENCE</b>
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12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

- **Arizona State Courts – 2005 to 2019**
- **United States District Court for Arizona – 2005 to 2019**
- **Ninth Circuit Court of Appeals – 2007 to 2019**
- **Gila River Indian Community – 2008 to 2019**
- **Hopi Tribal Court – 2007 to 2019**
- **Ak-Chin Community Court – 2007 to 2019**

**For each jurisdiction, I stopped practicing in 2019 only because I was appointed Commissioner of the Superior Court.**

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No.** If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No.** If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
<b><u>Maricopa County Superior Court</u></b> (Commissioner)	<b>2019 to present</b>	<b>Phoenix, AZ</b>
<b><u>Gammage &amp; Burnham</u></b> (Equity Partner)	<b>2013 to 2019</b>	<b>Phoenix, AZ</b>
<b><u>Gammage &amp; Burnham</u></b> (Associate Attorney)	<b>2005 to 2012</b>	<b>Phoenix, AZ</b>

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

**Attachment A –**

**Law Partners/Associates at Gammage & Burnham  
Judges/Commissioners of the Superior Court of Arizona, Maricopa County**

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

**Prior to being appointed a commissioner, I practiced civil and commercial litigation at a local law firm, Gammage & Burnham. My clients were assorted, but mostly I represented small-business owners, financial institutions and other types of lenders, healthcare providers, and real-estate holding companies and developers.**

**The subject matters also varied. At the beginning of my career, I primarily handled debtor-creditor disputes: loan-enforcement lawsuits, collateral recoveries, judgment collections, and creditor representation in bankruptcy. After gaining courtroom experience, I retained the debtor-creditor practice while adding more sophisticated cases: property-rights litigation, eminent domain and valuation issues, and general business and contractual disputes. Although never the focus of my practice, I also prosecuted evictions and represented parties in probate and family-law proceedings.**

**As a medium-sized law firm, Gammage & Burnham was perfect for developing civil-litigation skills. The firm was large enough to attract a wide array of clients with complex legal issues. But the firm was not so large that associates were relegated to conducting legal research and reviewing documents. Very quickly in my career I was trusted to take depositions, draft motions, and argue in court. I soon graduated to serving as lead counsel for trials and other evidentiary hearings. As a result, I have considerable experience in every phase of the litigation process.**

- Commercial Litigation – 60%**
- Debt Collection/Bankruptcy – 30%**
- Other (listed below) – 10%**

17. List other areas of law in which you have practiced.

- **Landlord-Tenant**
- **Real Estate**
- **Construction**
- **Probate/Family**
- **Healthcare**

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. **None**

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

**In private practice, I negotiated and drafted scores of settlement agreements for commercial disputes. Many were relatively straightforward—typically the payment of a negotiated sum on specified terms in exchange for a release from further liability. Several, however, were complicated—such as arranging for a sale or transfer of real estate or other assets, specifying rights among numerous parties, or modifying the terms of an ongoing business relationship. Select settlement agreements that I drafted are described in response to question 22.**

**As a court commissioner, I have issued over twenty thousand release orders to the criminally accused. Release orders typically involve very little drafting; commissioners simply check boxes on preprinted forms to find probable cause (or not), appoint attorneys, and impose conditions and restrictions on a person's release. I started a trend, though, of inserting brief written descriptions of the underlying factual allegations and pertinent factors that guided each decision. This added information assists fellow judicial officers at future hearings. More importantly, it shows defendants (and their families and attorneys) that I familiarized myself with their situations before issuing orders affecting their liberty.**

**As a court commissioner, I have also drafted various opinions to explain my rulings on disputed issues in criminal cases. I never make a ruling without providing the parties some explanation of my reasoning. Two examples of my written opinions are attached in response to question 64.**

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.** If so, state:

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

**Arizona Registrar of Contractors – 3**

**Arizona Office of Administrative Hearings – 3**

- b. The approximate number of these matters in which you appeared as:

Sole Counsel: 3

Chief Counsel: 0

Associate Counsel: 3

21. Have you handled any matters that have been arbitrated or mediated? **Yes.**  
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 30

Chief Counsel: 0

Associate Counsel: 10

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

**Attachment B – Descriptions of Settled Cases.**

23. Have you represented clients in litigation in Federal or state trial courts? **Yes.**  
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 45

State Courts of Record: 100

Municipal/Justice Courts: **25**

The approximate percentage of those cases which have been:

Civil: **100**

Criminal: **0**

The approximate number of those cases in which you were:

Sole Counsel: **105**

Chief Counsel: **10**

Associate Counsel: **55**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **75**

You argued a motion described above **60**

You made a contested court appearance (other than as set forth in the above response) **25**

You negotiated a settlement: **70**

The court rendered judgment after trial: **5**

A jury rendered a verdict: **1**

The number of cases you have taken to trial:

Limited jurisdiction court **6**

Superior court **9**

Federal district court **5**

Jury **2**

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible. **Not applicable**

24. Have you practiced in the Federal or state appellate courts? **Yes.** If so, state:

The approximate number of your appeals which have been:

Civil: **15**

Criminal: **0**

Other: **0**

The approximate number of matters in which you appeared:

As counsel of record on the brief: **15**

Personally in oral argument: **3**

25. Have you served as a judicial law clerk or staff attorney to a court? **No.** If so, identify the court, judge, and the dates of service and describe your role.
26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

### **Attachment C – Descriptions of Fully Litigated Cases.**

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences,



contested hearings, administrative duties, etc.).

**Judge Pro Tem.** From 2017 to 2019, I served as a judge pro tem for the Superior Court of Arizona, Maricopa County. This was a volunteer position in the civil department. As a judge pro tem, I periodically covered commissioner calendars, which included hearing requests for orders of protection and ruling on written motions for post-judgment remedies. I also conducted approximately eight settlement conferences of civil lawsuits. And I presided over one jury trial, a personal-injury lawsuit arising out of a car accident.

**Initial Appearance Court.** In March 2019, I was appointed Commissioner of the Superior Court of Arizona, Maricopa County. My first assignment was the Initial Appearance (IA) Court, which is part of the criminal department and located at Watkins Jail (previously at the Fourth Avenue Jail). IA Commissioners perform mostly four judicial functions:

- (1) ***Initial Appearances*** – By law, this hearing must occur within twenty-four hours of an individual being arrested and detained, whether for new criminal offenses or pursuant to a warrant. The purposes are to:
  - (a) ensure there was probable cause for the arrest;
  - (b) inform the defendant of the potential charges, appoint counsel if appropriate, and set future court hearings; and
  - (c) determine eligibility for release and set release conditions—e.g., upon posting bond in a specified amount, with electronic monitoring or drug testing, on the individual's own recognizance, etc.
- (2) ***Search Warrants*** – IA Commissioners review affidavits submitted by police and investigatory agencies throughout the state seeking search warrants and other orders to obtain evidence.
- (3) ***Juvenile Removals*** – IA Commissioners consider applications from the Department of Child Safety to remove children from custodial parents and guardians.
- (4) ***Delinquency Detained Hearings*** – Similar to an initial appearance, detained hearings are for juveniles accused of delinquent behavior.

IA Court is incredibly fast paced. An average day has roughly 250 initial appearances (over thirty per docket, every three hours) and 100 search warrants/child-removal orders. IA Court runs twenty-four hours per day, 365 days per year. I worked many holiday, weekend, and overnight shifts.

IA Court receives every type of criminal case: homicides and violent assaults, theft and property crimes, weapon and drug offenses, probation

violations, domestic violence, even DUIs and simple misdemeanors being prosecuted in municipal or justice courts. The IA commissioner is the first judicial officer an individual sees after being arrested, so I served as the “face” of the judiciary and set the tone for how each case would proceed.

While decisions in IA Court are made quickly due to the volume of cases, they also need to be well-informed. Before ruling on defendants’ release conditions, I considered input from the arresting officers and their reports, criminal histories, the court’s pretrial services department and probation officers, prosecutors and defense attorneys, and victims.

**Presiding IA Commissioner.** In April 2021, I was named the Presiding Commissioner of the IA Court. In addition to continuing to perform the judicial tasks listed above, as a presiding commissioner I assumed certain administrative duties:

- (1) training incoming IA commissioners and judges pro tem;
- (2) coordinating and setting the monthly schedule for IA commissioners and judges pro tem;
- (3) responding to issues raised by various stakeholders—fellow commissioners and other court departments, court staff, prosecutors and defense attorneys, police agencies and DCS, detention staff at the jail, etc.; and
- (4) handling escalated issues and solving technological and logistical problems (arising during all hours) to ensure smooth and constant operations.

**Early Disposition Court.** In January 2022, I rotated within the criminal department to Early Disposition Court (EDC). Most felony cases are assigned initially to EDC to determine whether they can be resolved without the need for an evidentiary hearing. EDC commissioners handle all sorts of issues that arise during criminal cases, but primarily the following:

- (1) ***Sentencings*** – For individuals who plead guilty, I follow statutory guidelines and decide, within that framework and the stipulations of their plea agreements, whether sentences should be for imprisonment or probation, the length of time, and other terms (early-release opportunities, specific probation conditions and level of supervision, lost rights and privileges, monetary fines, community service, etc.);
- (2) ***Plea agreements*** – I review plea agreements and accept guilty pleas from criminal defendants while ensuring that the terms are appropriate and legal safeguards are followed;

- (3) ***Release conditions*** – I consider requests to modify defendants’ release conditions pending future hearings;
- (4) ***Restitution*** – I conduct evidentiary hearings to determine amounts owed to crime victims as restitution; and
- (5) ***Post-conviction relief*** – I rule on motions seeking various types of post-conviction relief, such as requests to set aside sentences, modify probation terms, obtain early terminations, and designate unclassified offenses as felonies or misdemeanors.

EDC is another high-volume assignment. The daily docket routinely has eighty matters. Keeping the calendar under control requires making quick but well-reasoned decisions and vigilant case management.

Of course, due to the importance of the subject matter—particularly for sentencings and other final dispositions—EDC commissioners must also pay careful attention to the details in plea agreements and statutory requirements. For each sentencing, EDC commissioners review the terms of a plea agreement and consider input from multiple parties: prosecutors and defense attorneys, the court’s probation department, victims, and the defendants themselves (and often close friends and family). EDC commissioners are expected to synthesize this information and rule on sentencing issues from the bench. I always include a cogent explanation for the reasons behind my decisions.

- 28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

#### **Attachment D – Descriptions of Cases Presided Over.**

- 29. Describe any additional professional experience you would like to bring to the Commission’s attention. **None.**

<b>BUSINESS AND FINANCIAL INFORMATION</b>
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- 30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as

described at question 14? **Yes.** If so, give details, including dates.

I have worked numerous jobs, starting in elementary and middle school with a paper route. During high school (1994 to 1998), I worked parttime washing dishes at a Mexican restaurant and stocking shelves at a grocery store. I also had a brief apprenticeship with an electrician at a small manufacturing shop.

In college (1998 to 2002), in addition to working as a math tutor and professor's research assistant, I had seasonal employment at a toy store. For three consecutive summers, I had a paid internship at the treasury and transportation departments of my hometown school district, where I managed accounts payable and planned bus routes.

Before starting law school, I worked for a division of the University of Michigan that had a contract with the federal government to determine the quarterly consumer-confidence index. My role entailed "cold calling" randomly selected households and administering a survey about spending habits.

During law school at the University of Michigan (2002 to 2005), I worked in the law library and then as a summer associate at Gammage & Burnham, where I started my legal career following graduation.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Not applicable.** If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.** If not, explain.

33. Have you paid all state, federal and local taxes when due? **Yes.** If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? **No.** If so, explain.

35. Have you ever violated a court order addressing your personal conduct, such as

orders of protection, or for payment of child or spousal support? **No.** If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **Yes.** If so, identify the nature of the case, your role, the court, and the ultimate disposition.

**In 2014, my wife and I filed a small-claims complaint (Arcadia Biltmore Justice Court No. CC2014-075524) against a home-warranty company over its denial of coverage for damaged pool equipment. The lawsuit was resolved with a judgment in our favor.**

**See the response to question 42 for information about a lawsuit—meritless and quickly dismissed—pertaining to my law practice.**

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.** If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **See below.** If so, explain. **My marital community owns stock in GoDaddy, where my wife is employed. I would recuse myself from matters involving GoDaddy (or any other company in which I have a financial interest) due to the conflict of interest.**

## CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No.** If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No**

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

41. If you performed military service, please indicate the date and type of discharge.

If other than honorable discharge, explain. **Not Applicable**

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

**In 2018, a lawsuit was filed against me, along with several other attorneys and their respective clients, asserting violations of federal debt-collection laws (*Bruno v. Sherman & Howard, et al.*, No. CV-18-361-PHX (D. Ariz.)). My client was a general contractor trying to collect a debt. The plaintiff/debtor had multiple creditors and he sued them all—plus their attorneys—in federal court. The plaintiff/debtor did not have an attorney, and his claims were baseless. He filed for bankruptcy and the claims were assigned to a trustee, who investigated briefly and declined to pursue the matter further. The lawsuit was dismissed.**

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **None**

44. List and describe any sanctions imposed upon you by any court. **None**

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No, but see below.** If so, in each case, state in detail the circumstances and the outcome.

**In July 2015, an opposing party (not the party's attorney) lodged a complaint against me with the State Bar of Arizona after losing at trial. This individual alleged that my client had offered false evidence. I have no reason to believe my client offered false evidence. Following a brief telephonic interview, the Bar dismissed the complaint and declined to investigate further.**

**Prior to that interview, I received a letter from the Bar advising me of the complaint and inviting a response. Although I do not believe this letter constituted notice of "formal charges" or was "cautionary" in nature, I list it here in an abundance of caution. I have never faced sanctions or disciplinary proceedings.**

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.** If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

<b>PROFESSIONAL AND PUBLIC SERVICE</b>
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50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.
- **Arizona Construction Law, author of Chapter 13: Remedies (published by HLK Global Communications, 2015)**
  - **Court Extends Anti-Deficiency Protection (co-author, The Arizona Bank, Jan/Feb 2012 ed.)**
  - **Anniversary of Influential Supreme Court Decision (published at gblaw.com, May 25, 2018)**
  - **Preferential Transfers and How Creditors Can Lose Funds Collected Before a Debtor's Bankruptcy (published at gblaw.com, Aug. 2, 2017)**

- **Balloon Payments and Late Fees** (published at gblaw.com, June 8, 2016)
- **Disposition of Personal Property Collateral** (published at gblaw.com, Jan. 19, 2016)
- **New Opinion on the Anti-Deficiency Statute** (published at gblaw.com, June 8, 2015)
- **Mechanic's Liens vs. Secured Loans: A Blow to Equitable Subrogation** (published at gblaw.com, Dec. 16, 2013)
- **Receivership Sales in Arizona** (published at gblaw.com, May 6, 2013)
- **The Risks of Not Contesting Personal Jurisdiction** (published at gblaw.com, Feb. 5, 2013)
- **Court of Appeals Increases Burden on Creditors Seeking Summary Judgment** (published at gblaw.com, Feb. 1, 2013)

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.** If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.** If so, describe.

**While in private practice, I routinely presented seminars on bankruptcy and creditor rights for fellow attorneys at my law firm, client groups, and trade organizations.**

**As the IA Court's presiding commissioner, I organized a seminar in May 2021 between fellow IA commissioners and representatives of the Phoenix Police Department to discuss issues pertaining to "no knock" search warrants.**

**During a recent judicial rotation training, I gave a presentation on initial appearances for juvenile judges and commissioners.**

53. List memberships and activities in professional organizations, including offices held and dates.

- **American Bar Association – 2005 to present**



- **State Bar of Arizona – 2005 to present**  
- Secretary of Bankruptcy Section, 2011 to 2017
- **Maricopa County Bar Association – 2005 to present**

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes.**

**From 2018 to 2022, I served on the Supreme Court of Arizona’s Committee on Examinations. This Committee is responsible for administering and grading the biannual bar exam.**

**From April 2021 to January 2022, I served on the Supreme Court of Arizona’s Pretrial Services Committee. This Committee consists of stakeholders throughout the state who meet periodically to review policies pertaining to the pretrial detention of criminal defendants.**

**As the IA Court’s presiding commissioner, I was occasionally asked to participate in ad hoc committees dealing with issues impacting IA Court.**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

- **State Bar of Arizona, Bankruptcy Section – section secretary (2011 to 2017)**
- **Mountain Park Health Clinic/ASU Center for Family Justice – volunteer at monthly free legal clinic in South Phoenix (2009 to 2012)**
- **Volunteer Lawyers Program – periodically accepted requests for pro bono representation of parties with civil claims**
- **United States Bankruptcy Court –**

**In 2014, at the bankruptcy court’s request, I accepted pro bono representation of a Chapter 7 debtor. My client was a domestic-violence survivor who had trouble finding employment, in part because she had changed her identity to hide from an abuser. She sought to discharge student loans, which requires a heightened showing and is rarely successful. We prevailed, and I was named to the bankruptcy court’s pro bono “Honor Roll” and recognized at a ceremony.**

54. Describe the nature and dates of any relevant community or public service you have performed.
- **Valley Youth Theatre – Board of Directors (2011 to 2019)**
  - **St. Francis/Xavier – Youth Softball and Soccer Coach (2016 to present)**
  - **RAMMS – Youth Basketball Coach (2017 to present)**
  - **Phoenix Rising FC – Parent Manager for Youth Soccer Team (2020 to 2022)**
  - **Madison Futbol Club – Youth Soccer Coach (2019 to 2020)**
  - **Arizona High School Mock Trial – Judge for Regional Competition (2011, 2022, 2023)**
  - **Arizona Town Hall – Recorder (2005)**
55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.
- **2014 Pro Bono “Honor Roll” by the United States Bankruptcy Court for Arizona (described in response to question 53)**
  - **2014 Super Lawyers’ “Southwest Rising Star” (limited to 2.5% of attorneys)**
  - **Arizona Trial College (2007)**
  - **American Mensa (inducted in 2001)**
56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.
- **Commissioner – Superior Court of Arizona, Maricopa County (March 2019 to present)**
  - **In 2014, I ran for a seat on the Board of Governors of the State Bar of Arizona but was not elected.**

Have you ever been removed or resigned from office before your term expired?  
**No.** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes.** If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

**My free time is mostly devoted to family. My wife and I have two children who attend public schools, a daughter in eighth grade and a son in fifth grade. Both are active in several team sports—they each play soccer, basketball, and softball/baseball—and our daughter is also a Girl Scout. A typical evening involves shuttling everyone to and from practices or games and squeezing in time for family dinners and homework.**

**For some of our children's teams, I serve as a volunteer coach. Although time-consuming and not without challenges, youth sports is one of my passions. Some of my fondest childhood memories are of playing Little League baseball with my father as a coach, and I try to create similar experiences for the kids on my teams.**

**Physical fitness is also important to me. I frequently hike Echo Canyon and run along the canal path near our house. I also play on a recreational co-ed soccer team with my wife and our friends, and I join in regular pick-up basketball games at a downtown gym. Consistent exercise helps me relieve stress and remain energetic and mentally sharp.**

**Finally, I am an avid reader. I particularly enjoy historical fiction, biographies, and any book that makes me ponder things in a different way.**

#### HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes**

#### ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the county's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant

to this consideration.

**I am the first from my family to attend college. I grew up in rural Northwest Ohio, the oldest child in a lower-middle class, blue-collar family. My parents were both raised on farms. My father worked incredibly long and difficult hours as a welder in a machine shop; he also took side jobs for local farmers fixing damaged equipment. My mother worked part-time as a church secretary and ran the household. I am proud of my humble roots, and following the example set by my family's work ethic has helped me succeed throughout my educational and professional career.**

**Having the perspective of a modest, working-class upbringing allows me to relate to those in similar situations, particularly those who could never afford to hire a decent attorney. Conversely, my fourteen years in private practice with an Arizona firm give me a business perspective and an understanding of the challenges facing local companies. As a judicial officer, I benefit from having both viewpoints.**

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

**I take pride in everything I do. In college, I maintained a perfect GPA in two majors, mathematics and political science, while competing in varsity athletics. For law school, I graduated with honors from a top-rated university. In private practice, I always exceeded my firm's targets and was voted unanimously to partner in my first year of eligibility. I take particular satisfaction in producing excellent written documents, and I always strive to explain complicated issues in plain English.**

**My law firm experience left me prepared to join the judiciary. I have considerable experience in every phase of the litigation process—from pleadings and motion practice; to discovery, trials, and evidentiary hearings; through appellate briefing and post-judgment enforcement. I have appeared in legal venues across the state: superior courts in almost every county, federal district and bankruptcy courts, and even several justice and tribal courts. I obtained excellent results for a variety of clients facing an assortment of legal issues. I have successfully managed heavy caseloads. Finally, as a result of being sole counsel in several trials, including two multi-day jury trials, I understand the important of remaining calm and am able to make reasoned decisions in high-pressure situations.**

**My time as a court commissioner has reinforced my readiness to serve as a judge. I quickly adapted to Initial Appearance Court, which is among the commissioner assignments with the highest volume (for both hearings and search warrants)—despite having no prior experience with criminal law. After**

only two years, I was named the IA Court's presiding commissioner and given the accompanying administrative and leadership duties. I also quickly adjusted to Early Disposition Court and have capably handled the myriad issues that arise in this assignment.

My abilities as a judicial officer—including communication skills, courtroom temperament, case management, and legal acumen—are all reflected in the excellent scores that I received during the 2022 Judicial Performance Review. JPR scores are based on anonymous survey responses from attorneys, parties, and staff who appeared in my division.

Further, I have a demonstrated record of public service. This includes my work for multiple bar and court committees, my prior positions as an unpaid judge pro tem and on the board of directors of a non-profit children's theatre, my many hours as a volunteer coach for youth sports, and my willingness to handle pro bono matters.

Finally, although I take the position of judicial officer very seriously, I do not take *myself* too seriously. I have a sense of humor. I am willing to acknowledge and correct my mistakes. I appreciate constructive criticism, and I work well with others.

I would welcome the opportunity to continue the reputation that Maricopa County enjoys of having an outstanding judiciary.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes. If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

The quintessential function of our legal system is determining the facts of a situation and applying the controlling legal principles, hopefully producing outcomes that are appropriate and fair. While attorneys advocate on their clients' behalf, judges are tasked with ensuring that the court system lives up to this ideal. A judge's actions and decisions impact not only individual lives and livelihoods (an immensely important consideration), they dictate the level of public trust in the judiciary.

As a court commissioner, I embrace these responsibilities and take them very seriously. In the criminal department, every day I make rulings affecting public order and individuals' liberty. I constantly remind myself that—even though it seems routine to me—my decision is one of the most significant events

in a person's life. I always ensure that parties are fully heard, applicable laws are followed, and my decisions are well-reasoned and explained fully.

I am applying for judge because I am ready to assume more such responsibilities. This is how I can best serve our community. My performance as a judicial officer, as reflected by the court's decision to make me a presiding commissioner and my excellent scores during judicial performance review—coupled with my education and experience in private practice—shows that I am ready for this next step.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

#### **Attachment E – Two Writing Samples.**

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

#### **Attachment F – Two Written Orders.**

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

#### **Attachment G – 2022 Judicial Performance Review Report and Scores**

## ATTACHMENT A

### Judges/Commissioners of the Superior Court of Arizona, Maricopa County

(question 15)

Jay Adleman	Quintin Cushner	Michael Kemp	Sigmund Popko
Sara Agne	Marvin Davis	Joseph Kiefer	Tara Prochko
Richard Albrecht	Harla Davison	James Knapp	Ashley Rahaman
Glenn Allen	Elisa Donnadiou	Ronee Korbin Steiner	Michael Rassas
Jeffrey Altieri	John Doody	Joseph Kreamer	John Rea
Lori Ash	James Drake	Margaret LaBianca	Joshua Rogers
Brad Astrowsky	Adam Driggs	Julie LaFave	Jeffrey Rueter
Stasy Avelar	Genene Dyer	Utiki Spurling Laing	Andrew Russel
Alison Bachus	Monica Edelstein	Todd Lang	Timothy Ryan
Christian Bell	Dean Fink	Kerstin LeMaire	Jennifer Ryan-Touhill
Justin Beresky	Geoffrey Fish	Michael Mandell	Nicholas Saccone
Harriet Bernick	Lacey Fisher	Thomas Marquoit	Aryeh Schwartz
Elizabeth Bingert	Ronda Fisk	Daniel Martin	Sarah Selzer
Michael Blair	Dewain Fox	Suzanne Marwil	David Seyer
John Blanchard	Jillian Francis	Julie Mata	Joan Sinclair
Scott Blaney	Therese Gantz	Steve McCarthy	Shellie Smith
Keelan Bodow	David Garbarino	Scott McCoy	Vanessa Smith
Joshua Boyle	Monica Garfinkel	David McDowell	Barbara Spencer
Mark Brain	Pamela Gates	Justin McGuire	Patricia Starr
Nicole Brickner	Jo Gentry	Jane McLaughlin	Pamela Svoboda
Roger Brodman	Cynthia Gialketsis	Joseph Mikitish	Timothy Thomason
Robert Brooks	Laura Giaquinto	Phemonia Miller	Peter Thompson
Lori Bustamante	Marischa Gilla	Keith Miller	Michael Valenzuela
Sunita Cairo	Michael Gordon	Scott Minder	Annielaurie Van Wie
Theodore Campagnolo	Warren Granville	Rodney Mitchell	Lisa Ann Vandenberg
Michelle Carson	Jennifer Green	Wendy Morton	Danielle Viola
Amanda Chua	Lauren Guyton	Frank Moskowitz	Lisa Wahlin
Terri Clarke	Ashley Halvorson	Christine Mulleneaux	Dawn Walton
Lindsey Coates	John Hannah	Sam Myers	Randall Warner
Rodrick Coffey	Melody Harmon	Tracy Nadzieja	Eartha Washington
Suzanne Cohen	Nicole Hartley	Casey Newcomb	Kevin Wein
Bruce Cohen	Michael Herrod	Suzanne Nicholls	Joseph Welty
Gregory Como	Richard Hinz	Brian Palmer	Tracey Westerhausen
Katherine Cooper	Nicolas Hoskins	David Palmer	Chuck Whitehead
Janette Corral	Jacki Ireland	Amanda Parker	Christopher Whitten
Christopher Coury	Charlene Jackson	Anne Phillips	Paula Williams
Max Covil	Melissa Julian	Susanna Pineda	William Wingard
Mary Cronin	Thomas Kaipio	Jay Polk	Cassie Woo
Kristin Culbertson	Brian Kaiser	Adele Ponce	Joshua Yost
David Cunanan	Amy Kalman	Gary Popham	Melissa Zabor

**Law Partners/Associates at Gammage & Burnham**  
(question 15)

Camila Alarcon	Susan Demmitt	Richard Mahrle	Joseph Richardson
Stephen Anderson	Lauren Fajkowski	Timothy Martens	Nicole Ricker
Cameron Artigue	Lauren Fitzsimons	Thomas McDonald	Lindsay Schube
Jonathan Bennett	Timothy Forsman	Kevin Merritt	James Senften
Kevin Blakley	Grady Gammage, Jr.	Jeffrey Miller	William Sheppard
Heather Boysel	Jefferson Hayden	Patricia Nolan	Manjula Vaz
Richard Burnham	Christopher Hering	James Polese	Susan Watchman
John Dacey	Michael King	Christopher Raddatz	George Winney
Randall Dalton	Michael Maerowitz		



## ATTACHMENT B

### Descriptions of Settled Cases (question 22)

1. ***CJ Design & Const. Corp. v. 668 North LLC***, Superior Court of Arizona, Maricopa County, Nos. CV2017-012173, CV2018-000752, CV2018-007730, CV2018-009400, and CV2018-009408; and Arizona Court of Appeals, Division One, Nos. CA-CV 17-0727, CA-CV 18-0301, and CA-CV 18-0437 (filed in 2017, resolved in 2018)

***Arizona Found. for Chinese Religious Rights, et al. v. True North LLC***, United States District Court, District of Arizona, No. 2:17-cv-00315 (filed in 2017, resolved in 2018)

#### *Counsel Involved:*

- John D. Wilenchik, WILENCHIK & BARTNESS; jackw@wb-law.com; (602) 606-2816 (counsel for CJ Design & Const. Corp.)
- Jonathan Frutkin, RADIX LAW; jfrutkin@radixlaw.com; (602) 606-9300 (counsel for Arizona Found. for Chinese Religious Rights)
- Mary R. O’Grady, OSBORN MALEDON; mogrady@omlaw.com; (602) 640-9352 (counsel for City of Phoenix)
- Christopher D. Payne, PAYNE LAW OFFICE; (480) 420-7199; chris@cpaynelaw.com (counsel for CCCC Condominium Assoc. and affiliates)

#### *Summary:*

I represented 668 North and affiliates, which had purchased a controlling interest in a commercial condominium complex known as the Chinese Cultural Center. 668 North intended to remodel the complex and move corporate headquarters to its units. CJ Design owned the remaining units, where it operated a restaurant.

CJ Design sued to enjoin the remodel. It asserted, among other things, that the proposed redesign violated deed restrictions and that 668 North had failed to follow procedures prescribed in the CC&Rs for obtaining approval from owners’ associations. In the first lawsuit, CJ Design obtained an initial TRO, but Judge Randall Warner denied the request for a preliminary injunction following a multi-day evidentiary hearing.

Before construction commenced, however, CJ Design obtained a stay of that ruling pending appeal. Several hearings followed in the appellate and trial court concerning the details of the stay and the security that CJ Design needed to post in

exchange. Although 668 North generally prevailed on the merits at each step, CJ Design filed subsequent lawsuits raising alternative theories of relief and seeking different venues to keep a stay in place. To further complicate things, heavy rains during this time penetrated the complex's decorative roof—the most hotly contested portion of the proposed remodel. This caused interior water damage and led to disputes over how to handle repairs while preserving the parties' rights. Eventually, after five superior-court lawsuits, producing several contested hearings and three interlocutory appeals, plus one federal-court lawsuit, with extensive briefing and hearings in all cases, the parties reached a global settlement through which 668 North acquired CJ Design's units. I served as lead defense counsel for 668 North at each step.

*Significance:*

This matter was high-profile and procedurally very complicated. Both sides accused the other of behaving improperly. Protestors both inside and outside the courtroom added to the charged environment. Despite the antagonism between the parties, opposing counsel and I remained cordial. This highlights my ability to remain professional and level-headed in a combative and stressful environment. Without that relationship, opposing counsel and I likely would not have had productive settlement talks, and each side would have incurred significantly more in legal expenses.

The matter also highlights my ability to be practical. 668 North believed strongly that it occupied the correct legal position. But CJ Design used various procedural maneuvers to stall the project and keep its claims alive. At some point, I recognized that the cost to 668 North of protracted proceedings and continued delay outweighed the benefit of pursuing legal vindication.

2. ***In re T&H Construction, Inc.***, United States Bankruptcy Court, District of Arizona, No. 3:14-bk-09452 (filed in 2014 and settled in 2015)

***New York Community Bank v. Tracey***, Superior Court of Arizona, Yavapai County, No. P1300CV201400669 (filed in 2014, resolved in 2015)

*Counsel Involved:*

- Brian N. Spector, SCHNEIDER & ONOFRY; bspector@soarizonalaw.com; (602) 200-1295 (bankruptcy counsel for the debtor)
- Jerry Carver, ROBERTS & CARVER; jerrycarver@robertsandcarver.com; (928) 445-8824 (state-court counsel for the guarantors)

*Summary:*

I represented a bank that had issued a secured loan to a general contractor and obtained a personal guaranty from its principals. The contractor filed for Chapter 11 bankruptcy and sought through a plan of reorganization to force the bank to accept a credit for the value of the real-property collateral. Due to concerns over possible environmental contamination, the bank did not want to foreclose on the real property; the bank preferred to enforce the personal guaranty in state-court litigation. The parties reached a global settlement that provided for an orderly liquidation of the contractor's assets (without requiring the bank to foreclose or take title), a stipulated judgment on the guaranty claim, and a temporary forbearance pending completion of the liquidation process.

*Significance:*

This matter was intricate. Working with two sets of opposing attorneys, I negotiated and carefully prepared an agreement that addressed a myriad issues:

- procedures for selling real and personal property on terms acceptable to all stakeholders, with a judicial auction serving as a backup mechanism for liquidating any remaining assets;
- protections to ensure the debtor, guarantors, and their affiliates could pay necessary business expenses but not use assets for personal benefit, and to compel the release of excess proceeds to the bank;
- a payment schedule for the guarantors, with the amounts and timing of payments contingent on the results of the liquidation, and provisions to apply credits against the loan balance; and
- a stipulation for judgment, with enforcement stayed during the liquidation process, and with the balance tied to the results of the liquidation.

The final product was a thirty-page document considering every issue that could conceivably arise during a complicated liquidation. It was approved in the bankruptcy court by Judge Daniel Collins. Although the parties had several points of disagreement during the litigation (and during settlement negotiations), the final agreement set forth everyone's rights and responsibilities in an unambiguous and easy-to-follow manner—which prevented any further disagreements. The outcome highlights my ability to simplify complicated matters, consider multiple angles and potential issues, and produce a clear and comprehensive resolution to the satisfaction of all parties.

3. ***AmT CADC Venture, LLC v. Sun American Group-Griffiths Park, L.L.C.***, Superior Court of Arizona, Maricopa County, No. CV2011-021604 and Arizona Court of Appeals, Division One, No. CA-CV 14-0261 (filed in 2011 and resolved in 2016)

***AmT CADC Venture, LLC v. Casa Que Canta LLC***, Superior Court of Arizona, Maricopa County, No. CV2013-003413 (filed in 2013 and resolved in 2016)

***In re Sun American Group-Griffiths II, LLC***, United States Bankruptcy Court, District of Arizona, No. 2:11-bk-30726 (filed and resolved in 2011)

*Counsel Involved:*

- Andrew B. Turk, CLARK HILL (now at LAW ROSE GROUP); ATurk@roselawgroup.com; (480) 505-3934 (counsel for Sun American defendants)
- Nathan Kunz, POLSINELLI (now at COPPERSMITH BROCKELMAN); NKunz@cblawyers.com; (602) 381-5472 (counsel for Zipprich defendants)
- Wesley Ray, SACKS TIERNEY; Wesley.Ray@SacksTierney.com; (480) 425-2674 (counsel for Polich defendants)

*Summary:*

I represented AmT in enforcing a commercial loan through numerous steps. First, I obtained relief from the automatic stay in bankruptcy to foreclose on real-property collateral. Second, following a multi-day bench trial with Judge Lisa Flores, I obtained judgment against loan guarantors for the post-foreclosure deficiency. Third, I successfully defended the judgment on appeal. Fourth, I initiated judgment-collection procedures, coordinated an extensive asset investigation, and filed a separate lawsuit to undo a fraudulent transfer of assets by one of the guarantors. And fifth, after all these steps, I negotiated a settlement of the fraudulent-transfer claim and remaining obligations as part of a larger transaction involving separate real estate.

*Significance:*

These cases exemplify the breadth of my experience as a private attorney, as they spanned multiple forums and covered a variety of issues and virtually every phase of litigation. The state-court litigation involved disputes over: (1) the fair market value of foreclosed real property, (2) how to calculate liability under an unusual contractual provision that partially limited the guarantors' financial exposure, and (3) defenses based on AmT's acquisition of the loan from the FDIC. I was lead counsel throughout. I researched and briefed legal issues for partial summary judgment, conducted and

defended depositions and prepared for trial, and presented factual and expert testimony at trial. I also drafted the appellate briefs. Finally, I performed extensive investigation and records research on potential assets for collection and pursued various post-judgment collection remedies, including the fraudulent-transfer lawsuit.

The matter also demonstrates my ability to find creative solutions. Most civil lawsuits settle with one side paying the other an amount of money that is negotiated based on the alleged damages and estimates of the likely outcome and expense of trial. Here, I recognized the potential for a different structure. AmT had a large real-estate portfolio that it wanted to sell. The guarantor facing the fraudulent-transfer claim was looking to reacquire commercial real estate. We negotiated a complicated transaction that wrapped the underlying liability into the purchase of separate assets.

**4. *International Metaphysical Ministry, Inc. v. Schaefer***, United States District Court, District of Arizona, No. 3:17-cv-08280 (filed in 2017, resolved in 2018)

*Counsel Involved:*

- Christopher Goodman, GOODMAN LEGAL; chris@goodmanlegal.com; (602) 253-1000 (counsel for the plaintiff)
- Peter S. Veregge, CISLO & THOMAS; peter@cislo.com; (310-451-0647) (counsel for the co-defendant)

*Summary:*

In this federal-court lawsuit, I represented a website designer accused of stealing trade secrets from a former customer on behalf of the customer's competitor (who was also sued) and creating fake blogsites designed to harm the plaintiff. We were able to obtain records from internet service providers proving that my client did not have access to the IP addresses from where these malicious actions supposedly originated. We used these records to convince the plaintiff and his attorney to voluntarily dismiss the claims against my client and reimburse his legal expenses.

*Significance:*

From the outset, it was obvious that the plaintiff and its attorney were relying on an overzealous and underqualified computer analyst who purported to trace nefarious activity to my client, a humble website designer. We would have been justified in demanding immediate court hearings and seeking punitive damages for being dragged into this dispute. Instead of that "shotgun approach," which would have been significantly more expensive for both sides and taken much longer to resolve, I focused on what really mattered to my client—getting dismissed from a spurious lawsuit quickly

and with minimal expense. I openly shared our evidence with the plaintiff's attorney before seeking relief from the court, and I gave him an opportunity to verify everything. Rather than trying to embarrass anyone, I simply allowed the plaintiff to dismiss my client, save face, and proceed with its claims against the competitor.

**5. *Baum & Pell Company v. Kingswood Collision, Inc.***, International Centre for Dispute Resolution No. 01-15-0005-5284 (filed in 2015, resolved in 2016)

*Counsel Involved:*

- Shawn Aiken; (602) 718-3340; Shawn@ShawnAiken.com (arbitrator)
- Julianne C. Wheeler, JENNINGS, HAUG & CUNNINGHAM (now at THE WHEELER LAW GROUP); jcw@wheelerlawgroup.law; (602) 885-7485 (counsel for the plaintiff)

*Summary:*

I represented the owner of an automobile-repair facility, which was leased to a tenant operator. The lease provided for periodic renewals, with the parties submitting to binding arbitration if they could not reach an agreement on rental value. After listening to competing testimony from the parties and their expert appraisers, the arbitrator made preliminary findings suggesting that the tenant was certain to prevail. Rather than continue with briefing and force both sides to incur additional fees, I encouraged the owner to accept a final resolution and resolve the tenant's fee claim.

*Significance:*

This matter shows my ability to be practical. I recognized that my client's interests were best served not by continuing the adversarial process, but by acknowledging defeat and moving forward with its tenant, with whom it needed to maintain a working relationship. Although I have settled over a hundred lawsuits, sometimes using a mediator and sometimes informally, this matter differed in that the agreement was preceded by—and the direct result of—an arbitrator's initial ruling. The case also highlights my experience with alternative dispute resolution.

## ATTACHMENT C

### Descriptions of Fully Litigated Cases

(question 26)

1. ***TND Wire Harness LLC v. 9879 Redfield Inc.***, Superior Court of Arizona, Maricopa County, No. CV2017-001947 (Hon. Christopher Whitten) (filed in 2017 and resolved in 2019)

#### *Counsel Involved:*

- Loren Molever, MOLEVER CONELLY; Loren@LorenMolever.com; (602) 380-9492 (counsel for the plaintiff)
- Shawn Aiken; (602) 718-3340; Shawn@ShawnAiken.com (mediator)

#### *Summary:*

I represented the owners of a small manufacturing business that started in the owners' garage. After working and slowly growing it for twenty-plus years, they decided to retire and sold the business. The buyer shuttered the business within a year and sued my clients for fraudulently misrepresenting the finances. My clients countersued for the balance owned on a carryback promissory note. A mediation was unsuccessful, so the case went to trial.

The week-long jury trial with Judge Christopher Whitten featured testimony from the principals on each side, the brokers who handled the transaction, select customers and employees of the business, and competing financial experts. The jury returned a unanimous verdict in our favor, awarding nothing on the buyer's claims and ordering judgment for the full amount owed to my clients (plus interest and legal fees).

#### *Significance:*

This trial occurred one month before I started as a commissioner, culminating my law firm career. The stakes were high. Although the amount at issue was not astronomical, and in fact required being cost-conscious throughout, this business and its proceeds represented the sum of my clients' livelihood. Their ability to retire comfortably hinged on the result. The outcome highlights my ability to thrive under pressure, handle a complex commercial lawsuit in an efficient manner, and work well with a jury.

2. ***In re Rio Pozo, LLC***, United States Bankruptcy Court, District of Arizona, No. 2:17-bk-15149 (Hon. Madeleine Wanslee) (filed in 2017 and resolved in 2018)

*Counsel Involved:*

- Nancy March, FENNEMORE CRAIG; NMarch@fclaw.com; (520) 879-6800 (counsel for the objecting party) \*This contact information is taken from the pleadings, but Ms. March is retired from practicing law. I contacted her former firm but have been unable to obtain up-to-date contact information.

*Summary:*

I represented the debtor in this Chapter 11 reorganization bankruptcy. It had one asset: a contractual right to purchase five acres near the Tempe Marketplace. It had incurred expenses planning for the acquisition and paid a significant sum in nonrefundable earnest money, but financing for the final payment unexpectedly fell apart. The owner/seller refused to extend the deadline for closing. My client filed bankruptcy and Judge Wanslee, over the owner/seller's objection, extended the contract and allowed my client to perform once it obtained alternative financing (and paid interest for the delay).

*Significance:*

This was a matter of first impression. No court in the Ninth Circuit had allowed a debtor owning no assets to use Chapter 11 bankruptcy solely to extend a contractual deadline. Moreover, although I frequently represented creditors in bankruptcy, I had very little experience assisting debtors—and no experience doing so in a Chapter 11 reorganization. The case highlights my ability to consider and argue novel legal issues and succeed in unfamiliar situations.

3. ***Jokobov v. Dekermendjian***, Superior Court of Arizona, Maricopa County, No. CV2013-008613 (Hon. John Rea); Arizona Court of Appeals, Division One, No. CA-CV 14-0828; and Arizona Supreme Court No. CV-16-0296-PR (filed in 2013 and resolved in 2017)

***In re Dekermendjian (Jokobov v. Dekermendjian)***, United States Bankruptcy Court, District of Arizona, Nos. 2:17-bk-08661 and 2:17-ap-00640 (Bankr. D. Ariz., Hon. Madeleine Wanslee) (filed in 2017 and resolved in 2018)

*Counsel Involved:*

- David Mize; DavidM@jlohman.com; (740) 876-1924 (trial counsel for defendants)



*Summary:*

This state court lawsuit was a “corporate divorce” between shareholders of a closely held corporation. Following a bench trial, my client obtained judgment for a majority of the relief sought, plus attorney’s fees. The judgment was affirmed on appeal multiple times, with each appellate court awarding additional fees. The defendants filed bankruptcy seeking to discharge the judgment, but my clients prevailed in having the bankruptcy dismissed and the judgment declared non-dischargeable. I was sole counsel throughout.

*Significance:*

This case was contentious—to put it mildly. The parties despised each other. Despite the parties’ animosity, opposing counsel and I remained cordial. Mr. Mize was relatively new to the practice of law; I later learned that this was his first trial. Afterwards, he called to thank me for guiding him through the process and not taking advantage of his inexperience. The outcome shows my ability to maintain professionalism throughout the adversarial process. It also shows my experience with appeals.

**4. *Ray v. Phoenix Warner LLC*, Superior Court of Arizona, Maricopa County, No. CV2016-017191 (Hon. Kerstin LeMaire) (filed in 2016 and resolved in 2017)**

*Counsel Involved:*

- Amy J. Popham; apopham@pophamlawgroup.com; (623) 400-7921 (counsel for defendants)

*Summary:*

I represented a young couple who wanted to purchase a lot on the outskirts of Gilbert and build a family home. The lot was accessible using a dirt trail that ran adjacent to some farmland and connected with the nearest paved road. But, as we discovered when a bank rejected my clients’ loan application, there was no official means of ingress and egress. According to the underwriters, the dirt trail was contained entirely within the farmland and had never been dedicated as a public right-of-way.

The owner of the farmland refused to acknowledge or relinquish any rights in the dirt trail, so we filed a lawsuit to quiet title. Specifically, the complaint sought the declaration of an easement under either of two theories: (1) a prescriptive easement—because the trail historically had been used by a prior owner and the residents of three neighboring properties; or (2) an implied easement of necessity—because without this right the lot would be completely landlocked. My client won by summary judgment and

eventually built their home. The court also ordered the farm owner to reimburse my legal fees and costs.

*Significance:*

My clients could not afford drawn-out litigation, so I moved the case forward quickly and conducted virtually no discovery. We submitted historical aerial photographs showing that the dirt trail had always been present and well-defined. This evidence convinced the judge to declare an easement without requiring a trial, which is rare in a case like this—and a tremendous outcome given my clients' finances. The matter illustrates my ability to be efficient without losing efficacy.

5. ***Banner Health v. Miller***, Colorado District Court, No. 2014CV30076 (Hon. Charles M. Hobbs) (filed in 2014 and resolved in 2015)

*Counsel Involved:*

- Meghan E. Pound, CAPLAN AND EARNEST; MPound@celaw.com; (303) 443-8010; (local co-counsel)
- Ted Lavender, LEWIS BRISBOIS BISGAARD & SMITH (now at LAVENDER HOFFMAN); ted.lavender@lhalawyers.com; (404) 400-4500 (insurance counsel for defendant)

*Summary:*

I represented a national hospital chain in a lawsuit involving a non-contracted insurance plan. At issue was whether a patient's signed conditions of admission incorporates the hospital's chargemaster rates for the prices of services provided, as opposed to the amount due being limited to the "usual and customary" reimbursement paid by contracted insurance plans. The hospital prevailed by summary judgment.

*Significance:*

This matter featured a legal issue of first impression in the jurisdiction, for which courts across the country are divided. Moreover, it was an important issue that would have precedential effect on future hospital accounts and likely guide negotiations with insurance plans. Both sides were represented by sophisticated counsel, and I was lead counsel for the hospital. The outcome highlights my ability to analyze essential legal issues and draft excellent briefs.

## ATTACHMENT D

### Descriptions of Cases Presided Over (question 28)

1. ***State v. Lee, et al.***, Arizona Superior Court, Maricopa County, No. PF2020-121759 – Initial Appearances on May 31, 2020

#### *Counsel Involved:*

- Kevin Maricle, MARICOPA COUNTY ATTORNEY’S OFFICE (now retired); KMaricle1@gmail.com; (602) 321-8983

#### *Summary:*

Over one hundred defendants were arrested for rioting. By statute, this felony offense requires evidence of a reckless use of force or threatened violence. Each defendant had been present at a demonstration in Downtown Phoenix to protest recent police-involved shootings. Some of the attendees allegedly refused instructions to disperse and began throwing incendiary devices and other items.

#### *Significance:*

A county attorney appeared in these cases—a relative rarity for initial appearances, especially during a weekend calendar—and requested that the defendants remain in custody subject to posting sizeable monetary bonds. I noted that the probable-cause statements for each defendant contained identical, generic language and provided no evidence as to which specific individuals had supposedly used force or threatened violence. Rather, it appeared the police had simply arrested everyone who was present. I declined the requests for bond and ordered each defendant’s release.

These were high-profile arrests. I handled them by focusing on the evidence presented, not the inflamed passions created by the situation or external pressures. To my knowledge, and as vindication for my decisions, none of the defendants were charged.

2. ***State v. McHenry***, Superior Court of Arizona, Maricopa County, No. CR2021-120455 – Sentencing on December 5, 2022

#### *Counsel Involved:*

- Dawn Sauer, MARICOPA COUNTY ATTORNEY’S OFFICE; sauerd@mcao.maricopa.gov; (602) 663-7537

- Jeremy Huss, OFFICE OF PUBLIC DEFENSE SERVICES;  
jeremy.huss2410@gmail.com; (480) 824-8614

*Summary:*

Defendant was fifty-nine years old and confined to a wheelchair. He admitted to selling a small quantity of heroin—0.3 grams for five dollars—to undercover police. At the time, Defendant was living out of his vehicle. He pled guilty to the sale or transportation of narcotic drugs, a class two felony, with multiple prior felony convictions. The plea agreement called for a mandatory prison sentence with a presumptive length of 9.25 years.

At sentencing, Defendant moved to withdraw from the guilty plea. The prosecution acknowledged that Defendant had been approached by undercover officers asking to acquire drugs, with no indication that he was actively seeking to sell. The prosecution further admitted that Defendant was not preying on vulnerable individuals but merely selling to support his own addiction, and that the allegations did not suggest a large-scale operation. Although Defendant had prior felony convictions, including for drug-related offenses, they involved personal use, not sales. I granted the motion and allowed Defendant to withdraw from the agreement.

*Significance:*

In Early Disposition Court, I have reviewed plea agreements and issued sentencing orders for thousands of individuals, including many in similar situations. Compared to how other cases have resolved, I recognized that this plea agreement was extraordinarily harsh. Given the small quantity of drugs at issue and the Defendant's living situation at the time and expression of remorse, I felt confident that he did not pose an ongoing danger to the community. The better outcome would be for a shorter term of incarceration followed by court supervision, substance-abuse treatment, and assistance with housing—all issues best handled through probation. To facilitate a fair and just result, I did not enforce the plea agreement and encouraged the parties to negotiate further.

The case illustrates my sense of fairness and willingness to take the time to consider cases carefully. Although simply enforcing the plea agreement and sentencing Defendant according to its terms would have been much easier, the outcome would have been unjust.

3. ***State v. Lorenz***, Arizona Superior Court, Maricopa County, No. PF2021-111171 – Initial Appearance on March 25, 2021

*Counsel Involved:* None.

*Summary:*

Defendant was arrested for theft of a means of transportation, property damage, and trespass. He allegedly used a rock to break the windows of his ex-girlfriend's vehicle, then stole a neighbor's vehicle and used it to ram the ex-girlfriend's vehicle.

*Significance:*

Before each initial appearance, commissioners receive a recommendation on release conditions from the court's pretrial services department. Commissioners are encouraged to follow the recommendations, as they are based on empirical studies using data showing the post-arrest performance of individuals who faced similar charges and had similar criminal histories.

For this case, the recommendation was to release Defendant with supervision. I was not comfortable with that recommendation. Defendant had eight prior felony convictions, mostly for violent offenses or thefts. Plus, the domestic violence between these parties was allegedly ongoing and increasing in intensity. I thus deviated from the recommendation and ordered that Defendant remain in custody subject to posting a significant monetary bond. The case shows that I am not afraid to make decisions based on what I believe is appropriate.

**4. *State v. Dyer*, Superior Court of Arizona, Maricopa County, No. CR2018-105041 – Initial Appearance on April 19, 2021**

*Counsel Involved:* None.

*Summary:*

Defendant was on probation following a felony conviction for possession of methamphetamine. She was facing a revocation of probation for repeatedly failing to report to her assigned probation officer. Defendant was originally released on her own recognizance pending future hearings, but she failed to appear and was arrested on the resulting bench warrant.

*Significance:*

Although Defendant had a few prior misdemeanor convictions for drug-related offenses, she had no other felony convictions and no reported history of violence or deceit. She suffered from a drug addiction but appeared to pose no real danger. It was hard to imagine any benefit from imposing a monetary bond that would likely keep her detained; in fact, doing so might set her back further. On the other hand, Defendant had shown no inclination to appear for court or comply with her probation terms, even when

facing potential incarceration. While a bond would serve no purpose, it was likewise hard to imagine how simply releasing her again would produce a different outcome.

I found a middle ground and imposed an unsecured bond. With unsecured bonds, defendants are released immediately and the financial obligation is owed only if release terms are violated—in which event it comes due automatically. This creates a financial incentive to comply. Although seldom used, studies suggest that unsecured bonds produce a higher percentage of successful court appearances than secured bonds (where the defendant must post the money in advance). Here, I tied the unsecured bond to defendant's promise to both appear for court and report to her probation officer.

The case highlights my ability to find creative and practical solutions. I later checked the docket, and Defendant kept her promise and appeared for the next hearing.

**5. *Coleman v. Cornell***, Superior Court of Arizona, Maricopa County, No. CV2017-010366 – Civil Jury Trial on June 21, 2018

*Counsel Involved:*

- Timothy G. Tonkin, PHILLIPS LAW GROUP; timt@phillipslaw.com; (602) 258-8900; and Amy N. Vela (now at FRIEDL RICHARDSON), amy@friedlrichardson.com; (602) 553-2220 (counsel for Plaintiff)
- Elizabeth Johnson (now at LAW OFFICES OF RACHEL C. WOLF), elizabeth\_m\_johnson@progressive.com; (623) 687-3100 (counsel for Defendant)

*Summary:*

Plaintiff sued Defendant for personal injuries stemming from a motor-vehicle accident. This was a “short trial,” conducted pursuant to a procedural rule that provides for streamlined trials when a jury is demanded but the amount at stake is relatively small.

*Significance:*

I presided over this trial as a judge pro tem. I had previously participated in training to conduct short trials and was selected for this case. At the final pretrial conference, I met with counsel to review procedures and agree on jury instructions and assorted housekeeping matters. During trial, I handled voir dire (including a *Batson* challenge when one party claimed that a juror was struck due to her race). I resolved evidentiary objections during the testimony and ruled on motions after each side rested. And I generally ensured that the case ran smoothly and was presented to the jury in a fair and timely manner.

Unlike my commissioner assignments, which have involved fairly quick hearings for criminal defendants and juveniles, this was an all-day jury trial in a civil dispute. It demonstrates my ability to successfully oversee different types of matters as a judicial officer.

## ATTACHMENT E

### **Two Writing Samples** (question 63)

In the following writing samples, I shortened individuals' names to initials for privacy, adjusted formatting to comply with the instructions, and (with the second sample only) removed sections to comply with page limits. Otherwise, these are exact copies of motions that I drafted and filed.

1. ***Motion to Dismiss Under the Doctrine of Forum Non Conveniens*** – filed February 16, 2016 in Superior Court of Arizona, Maricopa County, No. CV2015-007566

### **Summary of Argument**

The doctrine of *forum non conveniens* applies when an alternative forum is better situated to litigate a dispute. JL accuses SR of abusing and killing DR. SR and DR lived together in San Diego. DR's death was investigated by the authorities in California. Every witness is located in California, and every relevant event occurred in California. In fact, JL's half-brother filed a similar lawsuit in California. The courts in California are better situated to litigate this case.

### **Factual Background**

In May 2015, SR lost DR—her husband of forty-plus years—to a self-inflicted gunshot. DR struggled with ALS for ten years, and the condition worsened over time.

[*Exhibit A* (Declaration of SR); *Complaint* at ¶¶ 4, 10]



In 2011, SR and DR moved fulltime to California. DR killed himself in the couple's condominium in San Diego. The suicide was investigated and confirmed by the local authorities. [*Exhibit A*]

Rather than be allowed to grieve, SR is facing lurid, sensationalized lawsuits by disgruntled children who are unhappy that SR retains control of the family assets. The first lawsuit, filed by FR (their son) is pending in state court in California. [*Exhibit B* (Complaint in *R v. R*, Super. Ct. Cal., San Diego Cty., Case No. 37-2015-00018504)]

Not wanting to be left out, JL (DR's daughter from a previous relationship) has sued SR here. Each lawsuit pertains to SR's relationship with DR. The allegations overlap considerably. [*Compare Complaint at ¶¶ 14-39 with Exhibit B at ¶¶ 23-27, 31-34* (nearly identical descriptions of alleged abuse)]

### **Procedural Status**

SR initially removed JL's lawsuit to federal district court and filed a motion to dismiss on two grounds: lack of personal jurisdiction and *forum non conveniens*. But the district court never ruled on SR's motion. Instead, the district court found a lack of diversity for federal subject-matter jurisdiction and granted JL's motion to remand.

Although the district court's findings on diversity likely defeat SR's argument on personal jurisdiction, those findings have little bearing on *forum non conveniens*. With respect to this issue, the motion to dismiss is still pending (despite JL's premature

application for entry of default). SR submits this *Motion* to properly bring the issue to the Court's attention.

### **Legal Argument**

The doctrine of *forum non conveniens* applies with a showing of two elements. First, there must be an “alternative forum available to hear the case.” *Coonley & Coonley v. Turck*, 844 P.2d 1177, 1181 (Ariz.App. 1993). Second, “on balance, the alternative forum [must be] a more convenient place to litigate the case.” *Id.* at 1182 (granting motion to dismiss under doctrine of *forum non conveniens*).

Regarding the first element, an alternative forum is available. The court in California is already proceeding with a similar lawsuit arising out of many of the same factual allegations. In fact, FR specifically identified JL as having an interest in the case and being entitled to notice of the California lawsuit. [*Exhibit B* at ¶¶ 8, 15, 74-75]

Regarding the second element, courts measure relative convenience by considering private interests and public interests. *Coonley*, 844 P.2d at 1182.

Relevant private interests include access to sources of proof and the ability to compel witness attendance. *Id.* at 1182-83. Here, every relevant event occurred in California. All material fact witnesses—primarily the police officers who investigated DR's suicide, and DR's caregivers—are in California. Such witnesses are beyond the subpoena power of this Court and unlikely to appear voluntarily. *Id.* (applying *forum non conveniens* where “[t]he dispute arose in Iowa, concerning events that occurred in Iowa,”

and “[m]ost of the documents and witnesses are in Iowa”). In addition, SR herself still resides in California. [*Exhibit A*]

Moreover, SR has already engaged defense counsel in California, due to the similar lawsuit filed by FR. [*Exhibit A*] This is another private-interest factor that favors the application of *forum non conveniens*. *Coonley*, 844 P.2d at 1183 (dismissing action even though defendant lived in Arizona, where cause of action arose in Iowa and defendant had already engaged Iowa counsel).

Although JL resides in Arizona, that fact is not enough to overcome a *forum non conveniens* defense. *Coonley*, 844 P.2d at 1183. Indeed, JL is suing on behalf of DR, and DR lived in California. [*Exhibit A*]

The relevant public interests include not imposing jury duty on citizens of a community that has little relation to the dispute, and having a lawsuit proceed in the same state as the law being applied. Here, the citizens of Maricopa County should not be compelled to serve on a jury for events that occurred entirely in California. Moreover, although JL alleges otherwise, any claims arose in California and should be governed by California law.

Finally, it would be unfair to force SR to defend identical lawsuits in separate jurisdictions. SR is being sued twice, by separate children, for the circumstances surrounding DR’s death. In fact, JL is identified as a beneficiary of FR’s lawsuit, and FR is identified as a beneficiary of JL’s lawsuit. Under Arizona caselaw, “if separate actions

are brought for the same wrongful death, they must be consolidated.” *Reed v. Frey*, 458 P.2d 386, 390 (Ariz.App. 1969) (further describing the “multiple actions” as “harassing a defendant”). Consolidation is impossible here because the initial lawsuit was filed in California, so the appropriate remedy is dismissal without prejudice.

### **Conclusion**

As the court explained in *Coonley*, “[a] forum that has no significant factual connection to the cause of action should not try the case.” 173 Ariz. at 534, 844 P.2d at 1184. This Court does not have a “significant factual connection” to allegations that occurred entirely in California.

Under the doctrine of *forum non conveniens*, Defendant SR asks the Court to enter an order dismissing the *Complaint* filed by Plaintiff JL, without prejudice against re-filing in the appropriate forum.

**2. Motion for Summary Judgment** – filed February 2, 2018 in Superior Court of Arizona, Maricopa County, No. CV2017-012173

**Undisputed Facts**

The subject property—referred to as the “Center”—is a retail/office building divided into 103 condominium units. CJ Design owns five units, organized as a single suite, where it operates a restaurant. In June 2017, 668 North purchased the other ninety-eight units. *DSOF* ¶¶ 1-3.

668 North intends to remodel its units, along with common areas at the Center, to serve as corporate headquarters. The proposed remodeling includes a new roof and other features that will not have a Chinese appearance. Construction does not and will not impede access to CJ Design’s units. *DSOF* ¶¶ 4-6.

The Center is subject to recorded restrictions known as the “Condo CC&Rs.”

Regarding alterations to common areas, the Condo CC&Rs provide as follows:

[A]ny such alteration or addition to the Common Elements which is approved in writing by the Owners of at least seventy-five percent (75%) of the Units and which does not interfere with the rights of any nonconsenting Owners in the use of their Units may be done so long as the cost of making or constructing such alternation or addition is borne by the consenting Owners.

*DSOF* ¶ 7; *Exh. E* at § 5.2.2.

The Condo CC&Rs are governed by an entity—the “Condo Assoc.”—which is controlled by the owners at the Center. In October 2017, the owners held a special meeting to replace two members of the three-person board of directors. As a result, JC and AC were elected to join RR as directors of the Condo Assoc. *DSOF* ¶¶ 8-11.

The revamped board of the Condo Assoc. then held a special meeting to consider 668 North's proposed remodeling. The directors approved the project by unanimous vote. *DSOF* ¶¶ 12-13.

The Center is further subject to recorded restrictions known as the "Master CC&Rs." The Master CC&Rs apply to the Center and five neighboring lots. The Master CC&Rs are governed by another entity—the "Master Assoc."—which consists of a delegate from each lot. The delegates to the Master Assoc. are as follows:

- RR – Lot 1A (the Center);
- SW – Lots 1B and 2 (medical office under court receivership);
- DH – Lots 3 and 4 (Palazzo apartment complex); and
- SD – Lot 5 (vacant lot being developed as a hotel). *DSOF* ¶¶ 14-20.

In November 2017, the delegates of the Master Assoc. held a special meeting to consider 668 North's proposed remodeling. Four lots voted (all except DH's), and they unanimously approved 668 North's project. *DSOF* ¶¶ 21-22.

Finally, the Master Assoc. oversees development through an Architectural Review Committee (the "ARC"). At the same meeting, the Master Assoc. elected a new ARC to consist of RR, SD, and DT. Although superfluous given the Master Assoc.'s approval, the ARC also voted unanimously in support of 668 North's project. *DSOF* ¶¶ 24-26.

### **Argument**

At issue is whether 668 North may, without CJ Design's consent, proceed with construction that affects common elements at the Center. CJ Design alleges breach of contract under the CC&Rs and various non-contract claims.

**1. The CC&Rs allow a 75% owner to alter common elements.**

The contract claim—indeed, the entire lawsuit—focuses on section 5.2.2 of the Condo CC&Rs:

[A]ny such alteration or addition to the Common Elements which is approved in writing by the Owners of at least seventy-five percent (75%) of the Units and which does not interfere with the rights of any nonconsenting Owners in the use of their Units may be done so long as the cost of making or constructing such alternation or addition is borne by the consenting Owners.

Each element of section 5.2.2 is satisfied. First, the proposed remodel constitutes an “alteration ... to the Common Elements.” The term “Common Elements” includes all portions of the Center that are not subject to separate ownership. *Exh. E* at § 2.10. In other words, this applies to the roof, garden, and other common elements that CJ Design wants to preserve.

Second, at least 75% of owners at the Center (in addition to the boards of two owners’ associations) have approved the proposed remodel. 668 North owns approximately 95% of all units, so the requirement for a super-majority is easily met.

Third, as stated in the board minutes approving the proposal, 668 North is financing the project itself. CJ Design, despite standing to benefit from a revamped and revitalized Center, is not being assessed any cost of construction. *Exh. H*.

Fourth, the project will not “interfere with the rights” of CJ Design in the “use of [its] Units.” CJ Design is still able to use its suite as a Chinese restaurant. The remodel does not block any portion of the restaurant suite and, as confirmed in board minutes, this will not change when construction turns to the roof. *Exh. A, H*.

Under Arizona law, owners' associations are given "broad powers in determining and managing the common uses of the general common elements." *Makeever v. Lyle*, 125 Ariz. 384, 388 (App. 1980). CJ Design must show that the approvals granted to 668 North were "arbitrary and capricious," with "no reasonable relationship to the fundamental condominium concept." *Id.*

CJ Design argues that its "rights ... in the use of [its] Units" under section 5.2.2 include having a Chinese-themed roof, which supposedly is necessary for a Chinese restaurant. (In reality, CJ Design will benefit from a free revitalization that brings hundreds of employees to the Center on a daily basis.) The argument ignores the distinction between Units and Common Elements. CJ Design focuses on a clause that applies to "Units," which are the portions of condominium property designated for separate ownership. *Exh. E* at § 2.34 (incorporating A.R.S. § 33-1202(22)). In other words, the reference to "Units" in this clause excludes common elements. The protected "rights" under this particular clause are limited to CJ Design's individual suite (i.e., "rights ... in the use of their Units"). The common elements, by contrast, are subject to "alteration or addition" under section 5.2.2. It is not plausible that a restriction on the right to alter common elements would be buried within a provision that authorizes such alterations.

Moreover, CJ Design's interpretation would be unduly restrictive. Every condominium owner has a fractional interest in common elements. If this particular clause (which protects "rights ... in the use of their Units") applied with equal force to



common elements, then every nonconsenting owner could effectively veto proposed alterations affecting common elements. The plain intent of section 5.2.2 is to allow such alterations with at least 75% ownership approval. *Powell v. Washburn*, 211 Ariz. 553 (2006) (courts interpret restrictive covenants to uphold drafting intent). CJ Design, as a mere 5% owner, should not have veto power.

Further to this point, the Condo CC&Rs elsewhere contemplate reasonable restrictions in the use of common areas, which one would expect during construction. *Exh. E* at §§ 4.2.2, 4.2.3. It is the owners' associations, not individual owners, who control the use of common areas. The associations approved the restrictions relative to the proposed remodeling. *Exh. H*. CJ Design cannot show that this decision was "arbitrary and capricious."

Essentially, CJ Design wants the entire Center to remain a Chinese-themed building forever. But, as the Court determined after considering evidence and argument, "[n]othing in the ... CC&Rs guarantees the property will always be a Chinese Cultural Center or will maintain its current design." *Under Advisement Ruling* (M.E. filed Dec. 1, 2017) at p. 4. Indeed, if the original developer intended for the property to remain Chinese-themed in perpetuity, the CC&Rs would have included restrictive covenants to this effect.

Rather, as the Court already found, the CC&Rs show an "intent that the majority of owners could control the property." *Id.* As a 95% owner, 668 North has a right to alter the roof, garden area, and other common elements.

## ATTACHMENT F

### **Two Written Orders**

(question 64)

In the following examples of written orders, I have shortened individuals' names to initials for privacy, adjusted formatting to comply with the instructions, and (with the second example only) removed portions to comply with page limits. Otherwise, these are exact copies of orders that I drafted as a court commissioner.

***1. Minute Entry Ruling on Restitution*** – filed August 8, 2022 in Superior Court of Arizona, Maricopa County, No. CR2022-100497

### **Background**

In December 2021, Defendant started a fire inside a library at Arizona State University. The fire caused damage to walls, light fixtures, and library materials. Four months later, Defendant pled guilty to arson and aggravated property damage. At sentencing, the Court ordered Defendant to pay full restitution for all economic losses.

In July 2022, the Court held a hearing to determine the restitution amount. The State requested \$1,221.65 and presented invoices from ASU, supplemented with avowals from counsel, reflecting this sum as the total cost of supplies used, materials purchased, and the time spent performing repairs.

In response, Defendant raised a singular objection: restitution should not include the labor cost attributed to ASU's salaried employees. He argued that ASU would have paid the same salaries to these employees—regardless of this specific job—so the labor

component does not represent an economic loss. The State conceded that ASU used salaried maintenance workers to perform the repairs.

Defendant asserted no other objections. He agreed that restitution should include the cost of supplies used and materials purchased. He did not challenge the scope of work performed. And he did not dispute the reasonableness of either the time spent or the hourly rate claimed by ASU for its labor cost.

### **Analysis**

In Arizona, crime victims have a constitutional right to restitution.<sup>1</sup> By statute, restitution should equal the “full amount” of a victim’s “economic loss.”<sup>2</sup> The party seeking restitution has the burden of proving its claim by a preponderance of evidence.<sup>3</sup>

The purpose of restitution is making victims whole, not punishment, so victims should not recover more than their actual losses.<sup>4</sup> Further, restitution is intended as compensation only for economic losses caused directly by the underlying crime; consequential damages are excluded.<sup>5</sup> The Arizona Supreme Court has explained that to qualify for restitution, a loss must: (1) be economic; (2) be one that the victim would not have incurred but for the criminal conduct; and (3) flow directly from the defendant’s

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1 Ariz. Const. art. II, § 2.1.A.8.

2 A.R.S. § 13-603(C).

3 *State v. Quijada*, 246 Ariz. 356, 363-64 (App. 2019).

4 *Id.*

5 *Id.*; A.R.S. § 13-105(16).

conduct, without intervening causal factors.<sup>6</sup> The overall guiding principle is “reasonableness.”<sup>7</sup>

Neither party cited, and the Court was unable to find, controlling authorities that address whether restitution may include the labor cost associated with a victim’s salaried employees. Looking to other jurisdictions, a published appellate opinion from California, *In re Johnny M.*, analyzed this exact question under similar facts.<sup>8</sup> A juvenile had vandalized school property, and the trial court awarded restitution for the labor cost of the school’s salaried employees who repaired the damage.<sup>9</sup> The appellate court affirmed, reasoning that the time spent on repairs represented an opportunity cost because the school—but for the juvenile’s conduct—could have used this employee time for other tasks.<sup>10</sup> The opinion also relied on a public policy of encouraging victims to be efficient with available resources when performing repairs, and not incur out-of-pocket expenses unnecessarily to maximize a restitution claim.<sup>11</sup>

Although *Johnny M.* is not controlling in Arizona, the opinion’s reasoning is consistent with Arizona law. Our courts have previously recognized that the term “economic loss,” in the context of restitution, encompasses more than just “financial loss.” In *State v. Lapan*, for example, the sibling of a homicide victim used annual

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<sup>6</sup> *State v. Wilkinson*, 202 Ariz. 27, 29 (2002).

<sup>7</sup> *State v. Linares*, 241 Ariz. 416, 419 (App. 2017).

<sup>8</sup> *In re Johnny M.*, 100 Cal.App.4th 1128 (2002).

<sup>9</sup> *Id.* at 1130-31.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

employment leave to attend trial and requested restitution for that lost time.<sup>12</sup> The defendant argued this was not an economic loss, but the Arizona Court of Appeals disagreed, reasoning that “although the loss was time and not money, it was nonetheless real and a direct result” of the criminal proceeding.<sup>13</sup> The Court of Appeals further explained that the term “economic” is to be construed “as broadly as that term permits.”<sup>14</sup>

Moreover, Defendant caused ASU’s losses directly; he is not being forced to finance normal business operations. In *State v. Guilliams*, a former Department of Corrections employee was convicted of aiding an inmate’s escape, and the DOC sought restitution for the resulting expenses to recapture the inmate and investigate what happened.<sup>15</sup> The Arizona Court of Appeals allowed as restitution the “extraordinary costs” to recapture the inmate, which had resulted directly from the escape, but not the “attenuated costs” of determining what happened and preventing future escapes, as those expenses were indistinguishable from the normal costs of investigating any crime.<sup>16</sup> The Court of Appeals reasoned that restitution should not include costs incurred by employees performing their routine job functions.<sup>17</sup>

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<sup>12</sup> *State v. Lapan*, 249 Ariz. 540 (App. 2020).

<sup>13</sup> *Id.* at 550-51.

<sup>14</sup> *Id.* at 550.

<sup>15</sup> *State v. Guilliams*, 208 Ariz. 48 (App. 2004).

<sup>16</sup> *Id.* at 55.

<sup>17</sup> *Id.*

Repairing fire damage, however, is surely not within the normal course of duties for ASU's maintenance staff. These were extraordinary repairs, not attenuated costs, resulting directly from Defendant's conduct.<sup>18</sup>

### **Conclusion**

Under Arizona law, as noted above, the party seeking restitution must show three elements.<sup>19</sup> Applying that test here, the labor component of ASU's claim: (1) represents an "economic" loss, given the broad interpretation of that term and the opportunity cost of lost employee time; (2) is one that ASU would not have incurred but for the arson; and (3) flowed directly from Defendant's conduct without intervening causal factors. Plus, this was an extraordinary repair project, not within the normal operations of ASU's maintenance staff. The amount requested is reasonable overall. And, as a matter of policy, Defendant should not be able to avoid paying the labor cost associated with repairs solely because ASU made the economical decision to use salaried employees.

The State has met its burden. Defendant is ordered to pay \$1,221.65 in restitution to Arizona State University.

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<sup>18</sup> See *People v. Clapp*, 62 Cal.App.5th 862, 872 (2021) (approving of the holding in *Johnny M.*, discussed *supra*, and noting that cleaning up after vandalism is not part of the normal duties for school employees).

<sup>19</sup> *Wilkinson*, 202 Ariz. at 29.

**2. *Under Advisement Ruling on Restitution*** – filed Dec. 15, 2022 in Superior Court of Arizona, Maricopa County, No. CR2022-103769

**Background**

On January 31, 2022, while at a Bass Pro Shop, MP discovered his wallet was missing. It reportedly held his (and his wife's) identifications, cash and several credit cards, and a vehicle key. Surveillance footage showed GM using the cash and credit cards at nearby stores. Later that day, Mesa police located and arrested GM. He still possessed some of the stolen items (plus a substance identified as methamphetamine). But the identifications, certain credit cards, and the key were never found.

The State of Arizona promptly charged GM with multiple crimes: theft or possession of the stolen cash, theft and fraudulent use of the credit cards, and possession of dangerous drugs and related paraphernalia. Six weeks later, GM pled guilty to two counts—theft of a credit card and possession of dangerous drugs—under the terms of a plea agreement.

As part of the agreement, GM promised to pay “full restitution to all victims for all economic losses arising out of [the Mesa police report describing the incident] and any supplements thereto.” GM was sentenced to prison for the credit-card theft, followed by supervised probation for the drug possession. At sentencing, consistent with the plea agreement, the court ordered GM to “pay restitution for all economic loss.”

MP testified that in his jacket, along with the wallet, was a vehicle key (for what he described as a “show car”). Although he had another key, MP expressed concern that GM or an accomplice kept the missing key and knows his address where the vehicle is

stored. MP thus paid to have the vehicle rekeyed. He provided a written invoice for the cost (\$1,246.50) and testified that it was the lower of two estimates he obtained.

GM argues that the vehicle key falls outside the scope of restitution. He was not charged with theft of a key; the criminal complaint refers to only stolen currency and credit cards. Likewise, the police report cited in the plea agreement fails to mention the missing key.

MP acknowledges that the complaint and police report do not mention the vehicle key. He testified that—due to the commotion at the scene—he did not realize until later that the key was missing and never mentioned it to the police.

### **Legal Analysis**

To argue that restitution may not include losses pertaining to uncharged crimes, GM relies on *State v. Lindsley*, a published opinion from the Arizona Court of Appeals.<sup>20</sup> The facts in *Lindsley* are similar. The defendant found a misplaced wallet. The defendant's friend tried to cash a forged check that belonged to the victim. The defendant was arrested in possession of the wallet, which still held the remaining checks, and a quantity of marijuana. At trial, the defendant was convicted of forgery under a theory of accomplice liability.<sup>21</sup>

At sentencing, the victim sought restitution for three items: (1) the value of the wallet, due to it having acquired an odor of marijuana; (2) the value of a bracelet and ring

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<sup>20</sup> *State v. Lindsley*, 191 Ariz. 195 (App. 1997).

<sup>21</sup> *Id.* at 196.



that had been in the wallet but were never recovered; and (3) wages for two days of missed work during court hearings. The victim communicated these requests via an interview that was conducted for and summarized in the presentence report. Based solely on information in this presentence report—without further hearings—the trial court awarded the victim the entire amount requested.<sup>22</sup>

The Court of Appeals excluded restitution for the jewelry. The opinion states that “no restitution may be imposed for an uncharged offense that has not been admitted by defendant **and for which there is no supporting evidence** ... or for which the defendant has not agreed to pay.”<sup>23</sup>

Our situation, based on the language emphasized in the preceding quotation, is distinguishable. Even though GM was not formally charged with stealing the key, this court cannot conclude that “there is no supporting evidence.” In *Lindsley*, the trial court awarded restitution based entirely on information provided to the writer of the presentence report, without sworn testimony or supporting evidence. In fact, the Court of Appeals emphasized that the claim for missing jewelry was contradicted by evidence presented at trial:

Moreover, the lost jewelry was not mentioned until the presentence report, and that evidence is contradicted by the victim’s testimony at trial. When asked “what kinds of things” were inside her wallet by State’s counsel, the victim made no mention of the missing jewelry.<sup>24</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 197 (emphasis added).

<sup>24</sup> *Id.*

Here, however, we held an evidentiary hearing to determine restitution. MP testified about the key and resulting losses. In other words, the claim has “supporting evidence.”

Further, the Court of Appeals in *Lindsley* affirmed restitution for the soiled wallet. This confirms that restitution may include losses not arising directly out of the formal charges, so long as there is supporting evidence. The defendant in *Lindsley* was convicted of only forgery and marijuana possession, not theft or property damage. (Because the convictions occurred after trial, not a plea agreement, this was not a situation where the defendant consented to restitution for everything mentioned in a police report.) The missing jewelry did not arise out of the charged crime of forgery, but neither did the damaged wallet. Yet the Court of Appeals affirmed restitution for the wallet, because that claim had supporting evidence:

While it is true that defendant was not charged with the theft of the victim’s wallet, it is also true that defendant testified under oath that she possessed the victim’s wallet with the intent of permanently depriving the victim of it .... The trial court could reasonably infer from the evidence that the damage to the wallet was the direct result of defendant’s unlawful possession ....<sup>25</sup>

Compared to *Lindsley*, MP’s missing key is analogous to the damaged wallet, not the missing jewelry. MP’s restitution claim does not arise directly out of a charged offense, but—as with the wallet in *Lindsley*—it still has supporting evidence through

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<sup>25</sup> *Id.*

sworn testimony. The court found MP’s testimony regarding the missing key and resulting expenses to be credible.

GM’s objection is too technical. Arizona law favors substance (i.e., facts supported by evidence) over form. The same statute giving courts an affirmative duty to ensure restitution for entitled victims provides that “**any evidence** previously heard by the judge” may support the award.<sup>26</sup> And although GM was not formally charged with stealing the key, Arizona procedure provides that charging documents are “deemed amended to conform to the evidence adduced at any court proceeding.”<sup>27</sup> In *State v. Mercer*, the Court of Appeals upheld a restitution award for losses sustained outside the specific dates referenced in the charging document, with the opinion concluding that restitution is not limited to the “four corners of the indictment.”<sup>28</sup> Although unpublished and not binding, *Mercer* relies on several supporting authorities, and this court is persuaded that the same reasoning applies here.<sup>29</sup>

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26 A.R.S. § 13–804(I) (emphasis added).

27 Rule 13.5(b), Ariz.R.Crim.P.; *State v. Delgado*, 174 Ariz. 252, 254 (App.1993).

28 *State v. Mercer*, 2015 WL 404557 at \*4–5 (Ariz. App. Jan. 29, 2015) (finding “no reason to mechanically limit restitution awards to the dates or amounts specified in the indictment”).

29 *See United States v. McMichael*, 699 F.2d 193, 195 (4th Cir. 1983) (upholding a restitution order in an amount greater than the total the defendant was accused in the indictment of embezzling); *State v. Fancher*, 169 Ariz. 266, 268 (App. 1991) (recognizing that “restitution orders in excess of amounts alleged in charging documents on which convictions were based have been affirmed”); *State v. Williams*, 208 Ariz. 48, 52 (App. 2004) (stating that “restitution statutes do not require that a specific victim be named in a statute, indictment, or verdict form”).

**ATTACHMENT G**

**Judicial Performance Review Report and Scores**  
(question 65)

**Commissioner: Gregory GNEPPER**  
**Current Assignment: Criminal**

Results of 10 or fewer surveys received from Litigants, Witnesses and Jurors\*

<u>Litigant Survey Questions</u>	<u>Judicial Branch Score</u>	<u>Litigants/ Witnesses/ Juror Responses</u>
<b>Section I: Legal Ability</b>		
<i>Basic fairness and impartiality.</i>	4.4	4.8
<i>Equal treatment regardless of race.</i>	4.6	4.7
<i>Equal treatment regardless of gender.</i>	4.6	4.7
<i>Equal treatment regardless of religion.</i>	4.6	4.5
<i>Equal treatment regardless of national origin.</i>	4.6	4.5
<i>Equal treatment regardless of disability.</i>	4.6	4.5
<i>Equal treatment regardless of age.</i>	4.6	4.7
<i>Equal treatment regardless of sexual orientation.</i>	4.6	4.5
<i>Equal treatment regardless of economic status.</i>	4.5	4.5
<b>Section II: Communication Skills</b>		
<i>Explained proceedings.</i>	4.5	5.0
<i>Explained reasons for delays.</i>	4.4	5.0
<i>If a juror, clearly explained juror's responsibilities.</i>	4.6	NR
<b>Section III: Judicial Temperament</b>		
<i>Understanding and compassion.</i>	4.4	5.0
<i>Dignified.</i>	4.5	5.0
<i>Courteous.</i>	4.5	4.7
<i>Conduct that promotes public confidence in the court and commissioner's ability.</i>	4.5	5.0
<i>Patient.</i>	4.5	4.7
<b>Section IV: Administrative Performance</b>		
<i>Punctual in conducting proceedings.</i>	4.4	4.3
<i>Maintained proper control in courtroom.</i>	4.6	5.0
<i>Was prepared for the proceedings.</i>	4.6	5.0

Note: The JPR survey was administered from February 28 through May 20, 2022.

## Results of more than 10 surveys received from Attorneys

<b><u>Attorney Survey Questions</u></b>	<b><u>Judicial Branch Score</u></b>	<b><u>Attorney Responses</u></b>
<b>Section I: Legal Ability</b>		
<i>Legal reasoning ability.</i>	3.9	3.9
<i>Knowledge of substantive law.</i>	3.9	3.8
<i>Knowledge of rules of evidence.</i>	4.0	3.9
<i>Knowledge of rules of procedure.</i>	3.9	3.7
<b>Section II: Integrity</b>		
<i>Basic fairness and impartiality.</i>	3.9	3.9
<i>Equal treatment regardless of race.</i>	4.3	4.3
<i>Equal treatment regardless of gender.</i>	4.3	3.9
<i>Equal treatment regardless of religion.</i>	4.4	4.3
<i>Equal treatment regardless of national origin.</i>	4.4	4.3
<i>Equal treatment regardless of disability.</i>	4.3	4.4
<i>Equal treatment regardless of age.</i>	4.4	4.2
<i>Equal treatment regardless of sexual orientation.</i>	4.4	4.4
<i>Equal treatment regardless of economic status.</i>	4.3	4.1
<b>Section III: Communication Skills</b>		
<i>Clear and logical oral communication and directions.</i>	3.9	4.1
<i>Clear and logical written decisions.</i>	4.0	4.0
<i>Gave all parties an adequate opportunity to be heard.</i>	4.0	4.3
<b>Section IV: Judicial Temperament</b>		
<i>Understanding and compassion.</i>	3.9	4.0
<i>Dignified.</i>	4.0	4.2
<i>Courteous.</i>	4.0	4.2
<i>Conduct that promotes public confidence in the court and commissioner's ability.</i>	3.9	3.9
<i>Patient.</i>	3.9	4.1
<b>Section V: Administrative Performance</b>		
<i>Punctual in conducting proceedings.</i>	4.1	4.1
<i>Maintained proper control in courtroom.</i>	4.2	4.2
<i>Prompt in making rulings and rendering decisions.</i>	4.2	4.1
<i>Was prepared for the proceedings.</i>	4.1	4.2
<i>Efficient management of the calendar.</i>	4.1	3.9
<b>Section VI: Settlement Activities</b>		
<i>Appropriately conducted or promoted settlement.</i>	4.2	4.4

Note: The JPR survey was administered from February 28 through May 20, 2022.

Results of 10 or fewer surveys received from Staff

<u>Staff Survey Questions</u>	<u>Judicial Branch</u> <u>Score</u>	<u>Staff</u> <u>Responses</u>
<b>Section II: Integrity</b>		
<i>Basic fairness and impartiality.</i>	4.6	4.6
<i>Equal treatment regardless of race.</i>	4.7	4.7
<i>Equal treatment regardless of gender.</i>	4.7	4.8
<i>Equal treatment regardless of religion.</i>	4.7	4.8
<i>Equal treatment regardless of national origin.</i>	4.7	4.8
<i>Equal treatment regardless of disability.</i>	4.7	4.8
<i>Equal treatment regardless of age.</i>	4.7	5.0
<i>Equal treatment regardless of sexual orientation.</i>	4.7	4.8
<i>Equal treatment regardless of economic status.</i>	4.7	4.8
<b>Section III: Communication Skills</b>		
<i>Clear and logical oral communication and directions.</i>	4.5	4.2
<b>Section IV: Judicial Temperament</b>		
<i>Understanding and compassion.</i>	4.5	4.4
<i>Dignified.</i>	4.6	4.4
<i>Courteous.</i>	4.6	4.4
<i>Conduct that promotes public confidence in the court and commissioner's ability.</i>	4.6	4.4
<i>Patient.</i>	4.5	4.4
<b>Section V: Administrative Performance</b>		
<i>Punctual in conducting proceedings.</i>	4.5	4.3
<i>Maintained proper control in courtroom.</i>	4.6	4.4
<i>Was prepared for the proceedings.</i>	4.6	4.5
<i>Respectful treatment of staff.</i>	4.6	4.6
<i>Cooperation with peers</i>	4.7	4.5
<i>Efficient management of calendar</i>	4.6	4.3

Note: The JPR survey was administered from February 28 through May 20, 2022.